

BOARD OF APPEALS CASE NO. 5433

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BEFORE THE

APPLICANTS: Terry & Miriam Brennan

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow a sunroom
within the required rear yard setback;
690 Brigantine Place, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 7/14/04 & 7/21/04

HEARING DATE: September 1, 2004

Record: 7/16/04 & 7/23/04

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Terry Brennan and Miriam Brennan, are requesting a variance pursuant to Section 267-36B, Table V, of the Harford County Code, to allow a sunroom within the required thirty-five (35) foot rear yard setback (24 foot proposed) in an R2/COS District.

The subject property is located at 690 Brigantine Place, Bel Air, Maryland 21014, in the Third Election District, and is more particularly identified on Tax Map 48, Grid 1D, Parcel 362, Lot 32. The parcel contains approximately 7,258 square feet.

The Applicant, Terry Brennan, appeared and testified that he and the Co-Applicant, Miriam Brennan, are the owners of the subject property. He also stated that he had read the Department of Planning and Zoning Staff Report, and had no changes or corrections to that information contained therein. The subject parcel is improved by a two-story single family home with an attached two car garage, a double wide concrete driveway, a rear concrete patio and an outside basement areaway. The rear yard slopes gradually downward to the back property line, and adjoins a large open field.

According to Mr. Brennan, the existing dwelling was constructed only 36 feet from the back property line. Because the rear of the home is the only practical location in which to construct an addition, the Applicants are unable to build a sunroom without first obtaining an area variance. The Applicants propose to construct a 20 foot by 12 foot one-story unheated glass and screen sunroom on top of the existing rear concrete patio. The outside wall of the proposed sunroom would be 24 feet from the rear property line at its closest point, resulting in an 11 foot encroachment into the rear yard setback. A rendition of the proposed structure is incorporated in the Staff Report as Attachment 11.

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Mr. Brennan stated that in his opinion, the proposed sunroom would have no adverse impact on neighboring properties because there are other homes in the Brighton Square community with similar attached rear sunrooms. The owners of nearby Lot 38 were granted a variance in 1996 to construct a similar sunroom. The proposed sunroom will be compatible with both the existing dwelling, and with other sunrooms found in the neighborhood.

The Co-Applicant, Miriam Brennan, appeared and testified that the subject property backs to a large vacant lot owned by the Harford County Board of Education. She recently contacted that Board, and asked to purchase a 20 foot wide strip of land abutting her rear property line. The Board declined this request, but did grant permission for the Applicants to utilize the referenced 20 foot area as long as they maintain the property. The Board also advised Ms. Brennan that it has no plans to develop this parcel anytime in the near future. Ms. Brennan verified her husband's testimony that the owners of 693 Brighton Place, located diagonally across the street from the subject property, were granted a variance to construct a sunroom in Board of Appeals Case Number 4635. A copy of the Hearing Examiner's decision in that case is incorporated in the Staff Report as Attachment 12.

According to the witness, the Applicant's primary reason for wanting to construct the proposed addition is that she suffers from CFS, a condition which causes extreme sensitivity to sunlight. Having an attached rear sunroom would enable her to spend more time outdoors with her children while they play in backyard. The Applicants introduced letters from nine neighboring property owners (Applicant's Exhibits 1-9) all of whom expressed support for granting of the requested variance.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune indicated that the Department found the subject property unique because of the way in which it was configured when the neighborhood was developed. He stated that Brigantine Place was required to back to a parcel of land owned by the Harford County Board of Education. As a result, a handful of properties on that street, including the subject parcel, have shorter lots and more restricted buildable rear yard areas than most of the other lots in the development. Mr. McClune also stated that in his opinion, the proposed sunroom would have no adverse impact on any neighboring properties.

No witness appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Terry and Miriam Kaiser Brennan, are requesting a variance pursuant to Section 267-36B, Table V, of the Harford County Code to allow a sunroom within the required thirty-five (35) foot rear yard setback (24 foot proposed) in an R2/COS District. Harford County Code Section 267-36B, Table V; design requirements for specific usages in R2/COS District requires a minimum 35 foot rear yard depth.

Section 267-11 of the Harford County Code permits the granting of variances stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- 1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- 2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding parcels. Cromwell, supra, at 721. If the subject property is unique, the hearing examiner may proceed to the second prong of the test, which requires a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The configuration of Brigantine Place required that the road back to a large parcel belonging to the Harford County Board of Education. As a result, a handful of lots, including the subject property, are shorter in length than most of the other parcels found within the Brighton Square development. If the subject parcel was not shorter than other lots in the community, the Applicants would not need a variance in order to construct the proposed sunroom. Thus, the first prong of the Cromwell test has been met.

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Having first found that the subject property is unique, it must next be determined whether denial of the requested variance would create unusual hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code in this case would result in practical difficulty for the Applicants. The restricted buildable area of the rear yard precludes construction of an attached rear sunroom similar to other sunrooms commonly found within the neighborhood. If the requested variance is denied, the Applicants will be denied property rights commonly enjoyed by other homeowners within their community.

Finally, the Hearing Examiner finds that the proposed sunroom will not create any adverse impact on any adjoining properties. Nine adjacent and nearby property owners wrote letters in support of the requested variance. There are other homes within the Brighton Square community with similar attached rear sunrooms. The proposed sunroom is compatible with both the existing dwelling and other homes in the neighborhood. In addition, the subject property backs to a vacant lot owned by the Harford County Board of Education, which has no plans to develop the parcel anytime in the near future.

The Hearing Examiner recommends approval of the Applicants' request subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the Applicants not encroach further into the setback than the distance requested herein.

Date: OCTOBER 1, 2004

Rebecca A. Bryant
Zoning Hearing Examiner